

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

AMENDMENTS
TO BE MOVED
ON REPORT

After Clause 1

LORD ROSSER
LORD HUNT OF KINGS HEATH
BARONESS HAMWEE

Insert the following new Clause—

“Impact of section 1 on the social care sector

- (1) The Secretary of State must commission and publish an independent assessment of the impact of section 1, and Schedule 1, on the social care sector within six months of this Act being passed.
- (2) The Secretary of State must appoint an independent Chair to conduct the assessment.
- (3) The assessment must consider the impact of provisions in section 1, and Schedule 1, on—
 - (a) the social care workforce;
 - (b) available visa routes for social care workers;
 - (c) long-term consequences for workforce recruitment, training and employee terms and conditions; and
 - (d) such other relevant matters as the independent Chair deems appropriate.
- (4) A copy of the independent assessment must be laid before both Houses of Parliament within fourteen days of its publishing date.”

Member’s explanatory statement

This new Clause would require the Secretary of State to commission and publish an independent report on the impact of ending free movement on the social care sector, including the impact on the workforce (such as skills shortages), visa options for social care workers, and long-term consequences for recruitment, training and terms and conditions for staff.

Clause 4

LORD GREEN OF DEDDINGTON
BARONESS NEVILLE-ROLFE

Page 3, line 8, at end insert –

“(5A) Any regulations made under subsection (1) which make provision to permit EEA and Swiss nationals to enter the United Kingdom for the purpose of taking up employment must include a specified limit on the total number of such persons to be granted permission for that purpose each calendar year.”

Member’s explanatory statement

This amendment would oblige the Secretary of State to place an annual limit on the number of EEA and Swiss nationals that may be granted permission to enter the UK to take up employment when making regulations under Clause 4(1).

Page 3, line 8, at end insert –

“(5A) Regulations under subsection (1) must make provision for the Resident Labour Market Test (as set out in the Immigration Rules Appendix A: attributes) to apply to job offers where a job offer forms part of the application of EEA and Swiss nationals seeking to enter the United Kingdom for the purpose of taking up employment.”

Member’s explanatory statement

This amendment would require that job offers made to EEA and Swiss nationals which form part of an application for that person to enter the United Kingdom should first be advertised in the domestic labour market in accordance with the Resident Labour Market Test.

Page 3, line 8, at end insert –

“(5A) Where regulations made under subsection (1) make provision for the minimum salary requirement for new entrants to be lower than the equivalent salary requirement for other migrants, the regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (5B) For the purposes of subsection (5A), “new entrant” means an EEA or Swiss migrant who meets one of the following criteria –
- (a) the migrant is switching from the Student or Graduate to the Skilled Worker route;
 - (b) the migrant is under the age of 26 on the date of their application; or
 - (c) the migrant is working towards a recognised professional qualification or moving directly into a postdoctoral position.”

Member’s explanatory statement

This amendment would require parliamentary approval of regulations which would make provision for the recruitment of new entrants to the labour market at pay rates below the general salary requirement under the new Points Based System.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 3, line 8, at end insert –

- “() No regulations may be made under subsection (1) after the end of the period of six months beginning with IP completion day.
- () In this section “IP completion day” has the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

Member’s explanatory statement

This would sunset the powers in Clause 4. It provides that the regulation-making powers under this Clause expire within six months of the end of the transition period.

Page 3, line 8, at end insert –

- “() The Secretary of State may not make regulations under subsection (1) unless –
 - (a) a Minister of the Crown has published guidance on the “reasonable grounds” for permitting applications to the EU Settlement Scheme on a date later than the deadline for application to the scheme;
 - (b) the guidance includes instruction on the immigration status of a person who is eligible to apply for the scheme in the period between the deadline for application and the date their application is made; and
 - (c) a copy of that guidance has been laid before Parliament.”

Member’s explanatory statement

This would prevent regulations being made under this Clause until the Government has published guidance on what reasonable grounds will be accepted as a reason for making a late application to the EU settlement scheme and how a person will be affected in the gap between the deadline and the date they apply.

BARONESS HAMWEE

Page 3, line 8, at end insert –

- “(5A) Regulations made under subsection (1) must make provision to enable UK citizens falling within the personal scope of –
 - (a) the Withdrawal Agreement,
 - (b) the EEA EFTA separation agreement, or
 - (c) the Swiss citizens’ rights agreement,to return to the United Kingdom accompanied by, or to be joined in the United Kingdom by, close family members.
- (5B) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members of UK citizens which could not have been imposed under EU law relating to free movement, as on the day on which this Act comes into force.
- (5C) For the purposes of subsection (5A) –
 - “close family members” means –
 - (a) children (including adopted children), and
 - (b) other close family members where that relation subsisted on or before 31 January 2020 and has continued to subsist;

Clause 4 - continued

“Withdrawal Agreement”, “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

After Clause 4

LORD OATES
LORD POLAK
LORD KERSLAKE

Insert the following new Clause –

“EU Settlement Scheme: physical documented proof

- (1) The Secretary of State must issue physical proof confirming pre-settled status or settled status to all EEA and Swiss nationals and their families who have been granted such status under the EU Settlement Scheme and who request such proof.
- (2) No fee may be charged for issuing physical proof under this section.”

Member’s explanatory statement

This new Clause seeks to provide physical proof of settled and pre-settled status to those who make a successful application through the scheme, providing physical evidence of their migration status.

BARONESS PRASHAR

Insert the following new Clause –

“Entry of EEA and Swiss minors using national identity cards

- (1) After 31 December 2020 the Secretary of State must allow minors who are nationals of any EEA State or Switzerland lacking settled or pre-settled status under the EU Settlement Scheme to enter the United Kingdom for a period not exceeding 30 days if they produce a valid national identity card issued by the relevant authority in their home country.
- (2) No minors entering the United Kingdom under subsection (1) may do so on more than one occasion in any calendar year.
- (3) After 31 December 2025 entry under subsection (1) may only be allowed on production by the minor of a valid national identity card which complies with the specifications and minimum security standards for machine readable travel documents as set out in Document 9303 of the International Civil Aviation Organization.
- (4) Nothing in this section prevents minors from entering the United Kingdom under another provision or scheme which is not subject to the restrictions set out in this section.
- (5) In this section –
“minors” means persons who are under the age of 18 on the date of their arrival in the United Kingdom;

After Clause 4 - continued

“relevant authority” means the body within each EEA State or Switzerland designated as responsible for issuing valid national identity cards to the citizens of that country.”

Member’s explanatory statement

This new Clause narrows the ability to enter the UK of EEA citizens or Swiss nationals (specifically those who lack settled or pre-settled status under the EU Settlement Scheme) so as to only include persons under the age of 18 and for a stay not exceeding 30 days in any calendar year.

BARONESS HAMWEE

Insert the following new Clause—

“Time limit on immigration detention for EEA and Swiss nationals

- (1) For the purpose of this section, a person (“P”) is defined as any person who, immediately before the commencement of Schedule 1, was—
 - (a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052);
 - (b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or
 - (c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc. under section 2(1) of the ECA), to be recognised and available in domestic law after exit day.
- (2) The Secretary of State may not detain P under a relevant detention power for a period of more than 28 days from the relevant time.
- (3) If P remains detained under a relevant detention power at the expiry of the period of 28 days then—
 - (a) the Secretary of State must release P forthwith; and
 - (b) the Secretary of State may not re-detain P under a relevant detention power thereafter, unless the Secretary of State is satisfied that there has been a material change of circumstances since P’s release and that the criteria in section (*Initial detention: criteria and duration*) are met.
- (4) In this Act, “relevant detention power” means a power to detain under—
 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
- (5) In this Act, “relevant time” means the time at which P is first detained under a relevant detention power.

After Clause 4 - continued

- (6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security.”

Member’s explanatory statement

This new Clause places a limit on the length of time EEA or Swiss nationals may be held in immigration detention of 28 days.

Insert the following new Clause—

“Initial detention: criteria and duration

- (1) The Secretary of State may not detain any person (“P”) to whom section (*Time limit on immigration detention for EEA and Swiss nationals*) applies under a relevant detention power, other than for the purposes of examination, unless the Secretary of State is satisfied that—
- (a) P can be shortly removed from the United Kingdom;
 - (b) detention is strictly necessary to effect P’s deportation or removal from the United Kingdom; and
 - (c) the detention of P is in all circumstances proportionate.
- (2) The Secretary of State may not detain P under a relevant detention power for a period of more than 96 hours from the relevant time, unless—
- (a) P has been refused bail at an initial bail hearing in accordance with subsection (5)(b) of section (*Bail hearings*); or
 - (b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to P in accordance with subsection (2)(c) of section (*Bail hearings*) and that hearing has not yet taken place.
- (3) Nothing in subsection (2) authorises the Secretary of State to detain P under a relevant detention power if such detention would, apart from this section, be unlawful.
- (4) In this section, “Tribunal” means the First-Tier Tribunal.
- (5) In this section, “relevant detention power” has the meaning given in section (*Time limit on immigration detention for EEA and Swiss nationals*).”

Member’s explanatory statement

This new Clause is linked to new Clause “Time limit on immigration detention for EEA and Swiss nationals” by specifying certain criteria that must be met during the initial detention and that the initial detention period should be no longer than 96 hours.

Insert the following new Clause—

“Bail hearings

- (1) This section applies to any person (“P”) to whom section (*Time limit on immigration detention for EEA and Swiss nationals*) applies and who is detained under a relevant detention power.
- (2) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must—

After Clause 4 - continued

- (a) release P;
 - (b) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
 - (c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to P.
- (3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(c), the Tribunal must hold an oral hearing (“an initial bail hearing”) which must commence within 24 hours of the time at which the reference is made.
- (4) If the period of 24 hours in subsection (3) ends on a Saturday, Sunday or Bank holiday, the Tribunal must hold an initial bail hearing on the next working day.
- (5) At the initial bail hearing, the Tribunal must –
- (a) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
 - (b) refuse to grant immigration bail to P.
- (6) Subject to subsection (7), the Tribunal must grant immigration bail to P at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection (1) of section (*Initial detention: criteria and duration*) are met and that, in addition –
- (a) directions have been given for P’s removal from the United Kingdom and such removal is to take place within 14 days;
 - (b) a travel document is available for the purposes of P’s removal or deportation; and
 - (c) there are no outstanding legal barriers to removal.
- (7) Subsection (6) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection (1) of section (*Initial detention: criteria and duration*) above are met and that there are very exceptional circumstances which justify maintaining detention.
- (8) In subsection (6), “a bail hearing” includes –
- (a) an initial bail hearing under subsection (2) above; and
 - (b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 to the Immigration Act 2016.
- (9) In this section, “Tribunal” means the First-Tier Tribunal.
- (10) The Secretary of State shall provide to P or P’s legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State’s possession which are relevant to the decision to detain.
- (11) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to P or P’s legal representative in accordance with subsection (10), unless –
- (a) P consents to the documents being considered; or
 - (b) in the opinion of the Tribunal there is a good reason why the documents were not provided to P or to P’s legal representative in accordance with subsection (10).

After Clause 4 - continued

- (12) In the Immigration Act 2016, after paragraph 12(4) of Schedule 10 insert –
“(4A) Sub-paragraph (2) above does not apply to the refusal of bail within the meaning of section (*Bail hearings*) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.””

Member’s explanatory statement

This new Clause is linked to new Clauses “Time limit on immigration detention for EEA and Swiss nationals” and “Initial detention: criteria and duration” by providing for bail hearings during the initial detention period of 96 hours.

Clause 8

BARONESS HAMWEE

Page 5, line 34, at end insert “except sections –

- (a) (*Time limit on immigration detention for EEA and Swiss nationals*),
- (b) (*Initial detention: criteria and duration*), and
- (c) (*Bail hearings*)

which come into force six months after the day on which this Act is passed.”

Member’s explanatory statement

This amendment provides that new Clauses “Time limit on immigration detention for EEA and Swiss Nationals”, “Initial detention: criteria and duration” and “Bail hearings” come into force six months after the Act is passed.

Schedule 1

LORD PANNICK
LORD ROSSER
LORD BEITH

Page 7, line 26, leave out sub-paragraph (2)

Page 8, line 16, leave out paragraph 6

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23 September 2020
